

SUBJECT: Allowing governor to issue pardon after successful deferred adjudication

COMMITTEE: Corrections — committee substitute recommended

VOTE: 11 ayes — McReynolds, Madden, Dutton, England, Hodge, Kolkhorst, Marquez, Martinez, Miller, Ortiz, Sheffield

0 nays

SENATE VOTE: On final passage, April 2 — 31-0

WITNESSES: (*On House companion, HJR 98:*)

For — Herman Buhrig; (*Registered, but did not testify:* Kristin Etter, Texas Criminal Defense Lawyers Association; Matt Simpson, The ACLU of Texas; Erica Surprenant, Texas Criminal Justice Coalition; Charles Hosey, Janice Hosey, David Kugle, Josephine A. Kugle, Nelson Kugle; Carlos Robles)

Against — None

On — Bettie Wells, Board of Pardons and Paroles

BACKGROUND: Texas Constitution, Art. 4, sec. 11(b) and Code of Criminal Procedure, art. 48.01 authorize the governor to grant reprieves, commutations of punishments, and pardons after a criminal conviction. The governor can exercise this authority only upon the recommendation of the Board of Pardons and Paroles and in all criminal cases except treason and impeachment.

Under Code of Criminal Procedure, art. 42.12, sec. 5, a judge may, after receiving a plea of guilty or no contest, defer further proceedings without entering an adjudication of guilt and place the defendant on community supervision (probation). If the defendant successfully completes probation, the judge must dismiss the charges and discharge the defendant. This process is known as deferred adjudication and is unavailable for certain specified offenses.

**DIGEST:** SJR 11 would expand the governor's authority to grant pardons, reprieves, and commutations, upon recommendation of the Board of Pardons and Paroles, to cases in which a person had successfully completed a term of deferred adjudication. The amendment also would state that the governor's pardon authority includes posthumous pardons for actual innocence.

The proposal would be presented to the voters at an election on Tuesday, November 3, 2009. The ballot proposal would read: "The constitutional amendment authorizing the governor to grant a pardon to certain persons under certain circumstances."

**SUPPORTERS  
SAY:**

SJR 11 and its accompanying legislation amending the Code of Criminal Procedure, SB 223 by West, would correct an inequity in Texas law so that persons who complete successfully a term of deferred adjudication could be eligible for a pardon. Currently, the governor can grant pardons to persons who have been convicted but does not have the same authority for persons who complete deferred adjudication because these cases carry no conviction. Even though there is no record of a conviction in these cases, there is a record of the arrest and of the fact that a person was given a term of deferred adjudication, which is a form of probation. Having any type of criminal record can present barriers in finding employment and housing and obtaining state employment licenses.

SJR 11 and SB 223 would address this problem by providing a possible avenue of relief for persons who complete successfully a sentence of deferred adjudication. Under the bill, these persons could apply for a pardon and, if granted, they could have their records expunged.

This proposal would not result in an automatic pardon or the automatic expunction of anyone's record. Those receiving pardons under the authority in SJR 11 and SB 223 would have to follow the standard vetting procedure that ensures a pardon is deserved. They would have to apply to the Board of Pardons and Paroles, which would consider the case and then would have to recommend the pardon to the governor. The governor still would have full discretion about whether to grant a pardon. However, once a pardon was awarded, a person could meet the requirements for expunction and could have their criminal history removed from the public domain.

The amendment also would clear up any questions about whether the governor can grant posthumous pardons for actual innocence by placing that authorization in the Constitution.

SJR 11 and SB 223 would be a common-sense application of the governor's power and would result in a more consistent policy on pardons. Others who actually are convicted of an offense have the option of applying for a pardon, and those completing deferred adjudication should have the same option.

Current law does not preserve indefinitely all criminal records, but makes reasoned, limited exceptions to the public's access to these records. This proposal would be another such exception.

OPPONENTS  
SAY:

The state should be cautious about any new restrictions on the public's access to criminal history record information. The record of someone who has completed deferred adjudication successfully states that the person completed their term and that the charges were dismissed, and this should remain public information.

OTHER  
OPPONENTS  
SAY:

SJR 11 and SB 223 would not go far enough to aid those who complete a term of deferred adjudication. They should be able to have their records expunged without having to go to the Board of Pardons and Paroles and the governor for a pardon. Historically, this system has resulted in few pardons, and it would be better to develop another way to have their records expunged.

NOTES:

The committee substitute added the provision allowing the governor to grant posthumous pardons for actual innocence.

The companion legislation, SB 223 by West, passed the House by 143-0 on May 19.